In the High Court of Judicature at Madras

Dated: 8.02.2006

Coram

The Honourable Mr.JUSTICE P.D.DINAKARAN
and
The Honourable Mr.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Ref) No.134 of 2000

Commissioner of Income Tax
Tamil Nadu-I, Chennai .. Applicant

Vs.

M/s.The Enfield India Ltd.,
115, Anna Salai, Chennai-15 ..Respondent

Reference under Section 256(1) of the Income Tax Act 1961 by the Income Tax Appellate Tribunal, `A' Bench, Chennai in R.A. No.186/Mds/97 in I.T.A. No.163/Mds/89 for the assessment year 1985-86 against IT Appeal No.6/88-89, dated 31.10.1988 on the file of the Commissioner of Income tax (Appeals) V, Chennai 34 against STGIR No.6-E/85-86/PA.No.47-004-CR/6890 dated 22.2.1988 on the file of the Inspecting Asst. Commissioner of Income Tax (Assessment) Range I, Madras.

For Applicant :: Mrs. Pushya Sitaraman,
Senior Standing Counsel
For Respondent :: Not Ready in notice.

J U D G M E N T

(Judgment of the Court was delivered by
P.D.DINAKARAN,J.)

At the instance of the Revenue, the Income-tax Appellate Tribunal has stated a case and referred the following question of law for our consideration:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the element of excise duty and customs duty on the closing stock paid by the assessee should be excluded in terms of Sec.43B of the Income-tax Act?".

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2.1. The assessment year involved is 1985-86. The assessee is a company engaged in the business of manufacture and sale of two wheelers and Agro Engineers. The assessee claimed Rs.19,14,678/- and Rs.42,52,538/- being excise duty and customs duty payments included in the value of the closing stock. The claim was disallowed by the assessing officer. Hence, the assessee went on appeal before the Commissioner of Income Tax(Appeals), who, relying on the decision of the Gujarat High Court in LAKHANPAL NATIONAL LTD., VS. COMMISSIONER OF INCOME TAX (162 ITR 240) held that the deduction claimed under Section 43B of the Act is admissible and allowed the appeal. On appeal by the Revenue, the appellate Tribunal following the decision of the Special Bench of the Tribunal in the case of INDIAN COMMUNICATION NETWORK P.LTD V. IAC (206 ITR 96)(AT), confirmed the order of the Commissioner of Income Tax (Appeals). It is against the order of the Income-tax Appellate Tribunal, at the instance of the Revenue, the Income-tax Appellate Tribunal has stated a case and referred the question of law referred to above.

3. Heard the learned Senior standing counsel Mrs.Pushya Sitaraman, for the applicant, who, in her fairness states that the issue involved in the above question of law is answered against the Revenue by the Supreme Court in the decision rendered in BERGER PAINTS INDIA LTD., VS. COMMISSIONER OF INCOME TAX (266 ITR 99).

4. In the instant case the assessee included the excise duty and customs duty actually paid in the accounting year on the closing stock manufactured but not sold. In computing its profits for the purpose of income-tax the assessee did not deduct the full amount of the duty paid in the accounting year but deducted only such part of the duty paid as related to the goods sold and added the balance of the duty relating to the closing stock to the value of the closing stock at the end of the year. The assessee claimed that the amount paid towards excise and customs duty on the closing stock should be excluded in terms of Section 43B of the Income tax Act.

5. The supreme Court in the decision referred to above has held that the entire amount of excise duty/customs duty paid by the assessee in a particular accounting year is allowable under Section 43B of the Income-tax Act, 1961, as a deduction in respect of that year, irrespective of the amount of excise duty/customs duty included in the valuation of the assessee's closing stock at the end of the accounting year as relating thereto.

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6. In view of the above conclusion, we hold that the Appellate Tribunal was justified in excluding the excise and customs duty paid on the closing stock. Accordingly, we answer the question of law referred to us in the affirmative, against the Revenue and in favour of the assessee.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

msk

To

1.The Assistant Registrar,Income Tax Appellate Tribunal
Madras Bench "A", Rajaji Bhavan, III Floor, Besat Nagar, Chennai 40.
(with records) (5 copies)

2.The Secretary, Central Board of Direct Taxes, New Delhi(3 copies)

3.The Commissioner of Income Tax (Appeals),
Tamil Nadu-I, Chennai.

4.The Inspecting Assistant Commissioner of
Income-tax(Assessment) Range I, Madras.

5. The Commissioner of Income Tax,
Tamil Nadu I, Chennai.

+ 1 CC to Mrs.Pushya Sitaraman, Advocate SR NO 5770

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